Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at http://about.jstor.org/participate-jstor/individuals/early-journal-content.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

same manner as in an interpleader proceeding commenced in a county court.'

"Explanatory Memorandum.

"Rule 19. The present rule, Order XXXIII, Rule 11, provides that claims to damages shall not be allowed in interpleader proceedings transferred from the High Court to the County Court. This rule is based on *Oliver* v. *Lewis*, W. N. 1889, 224, in which it was held that there was no jurisdiction to allow claims for damages in such proceedings. That report gives no reasons for the decision, but from the report of the case in the County Courts Chronicle, January 1, 1889 (reprinted from the Law Times), it appears that the case was decided on the ground that as Order XXVII, of the County Court Rules, as to county court interpleaders, contained no provisions relating to transferred actions, the court had, on the construction of the Judicature Act, 1884, Section 17, and the rules, no jurisdiction to entertain such claims, no rules having been made as to such claims pursuant to that section.

"The existing rule, Order XXXIII, Rule 11, was questioned in the recent case of *Salbstein* v. *Isaacs*, 114 L. T. Rep. 235, 1916, I. K. B. 1, but was held to be *intra vires*. There seems, however, to be no sufficient reason why remitted interpleaders should be dealt with in a different manner from county court interpleaders, and Rule 19 annuls the present rule and provides that, subject to any directions to the contrary which may be contained in the order transferring the proceedings, damages may be claimed against the execution creditor in a remitted interpleader in the same manner as in an interpleader proceeding commenced in the County Court."

Here we have an illustration of a technical defect in a rule already difficult because of its technical subject matter, properly corrected by a professional body and properly explained, so that practitioners are able to understand the motives for the amendment.

Samuel Rosenbaum.

TORTS—CONSPIRACY—CONTRACT FOR "CLOSED SHOP"—During the last quarter century the courts have frequently been called upon to deal with questions arising out of the controversies between organized labor and its employers, and the law as to combinations of laboring men and the means of carrying them out has been fast developing. Although statutes were required in a number of states, it has long since ceased to be doubtful that laboring men may lawfully combine to protect their common interests, and in the furtherance of those interests may stop work together. But as to the legitimate objects of such combinations and the means which may be used, there has been and is considerable diversity of opinion. One of the issues upon which many industrial controversies are waged

and which presents some difficulties of a legal nature is the question of the "closed shop." The cases before the courts have most frequently involved the conflicting rights of striking employees and their former employer. But another phase of the question, of no less importance, is that of the injury to other employees, or possible employees.

A number of courts have taken the position that a strike to secure a "closed shop" is illegal, because depriving the non-union man of his right to work for his employer without interference by third parties.[1] These courts recognize the right of men to strike to secure for themselves higher wages or better working conditions, but deny the right to use the economic coercion which a strike necessarily involves in order to attain an object which only indirectly benefits the members of the union and which seriously injures non-union employees. On the other hand, many courts take the view so clearly expressed by Justice Holmes in his dissenting opinion in the case of *Plant* v. *Woods*,[2] that it is illogical to say that a strike to obtain direct benefits is lawful and yet that one to strengthen the position of the union, so as to enable it effectively to strive for such objects, is unlawful.[3]

The same sort of considerations are involved in the closely related question of the legality of contracts voluntarily entered into between the employer and an association of employees, whereby it is agreed that none but members of the association shall be employed. Two recent Massachusetts cases deal with this question. In *Tracy, et al.*, v. *Osborne, et al.*,[4] a contract had been entered into between a manufacturer and an association of shoe workers, whereby a provision was made for the amicable adjustment of differences that might arise, and it was agreed that all work of the employer in certain designated rooms and departments should be done by members of the union, and that, as long as there should be a sufficient number of these to do the work, no other help should be employed. Some of the members of the union afterwards withdrew from it and, forming another association, exerted pressure on the employers to break the contract. A suit in equity for an injunction to restrain such conduct was brought by the union; and the court held that the contract was a legal one and that the plaintiffs were entitled to be protected by injunction against its breach.

[1] Lucke v. Clothing Cutters, *etc.*, Assn., 77 Md. 396 (1893); Plant v. Woods, 176 Mass. 492 (1900); Ruddy v. United Assn., 79 N. J. L. 467 (1910); Hitchman Coal & Coke Co. v. Mitchell, 202 Fed. 512 (1912); Bausbach v. Reiff, 244 Pa. 559 (1914).

[2] *Supra*, note 1.

[3] Nat. Protective Assn. v. Cumming, 170 N. Y. 315 (1902); Parkinson Co. v. Bldg. Trades Council, 154 Cal. 581 (1908); Kemp v. Division No. 241, 255 Ill. 213 (1912).

[4] 114 N. E. 959 (1917).

In the other case, *Shinsky* v. *Tracy, et al.*,[5] decided the same day, the plaintiff sued the union for damages caused by his discharge, basing his claim upon the existence of a contract similar to that in *Tracy* v. *Osborne*. But the plaintiff also proved that he not only lost the benefit of his contract of employment, but that, by reason of the defendants' control over the shoe industry in the city of Lynn, it had become practically impossible for him to obtain employment there at his trade. On these facts a recovery was allowed.

The distinction seems to be that where the contract in question is such as to deprive the non-union man of practically all opportunity to work at his trade in a community, it is illegal and its execution renders the parties liable in an action in tort to those injured by it; but where the contract is one from which the parties derive substantial benefits for themselves, and which injures no one at that time employed, the contract is a legal one, and any injury incident to it is *damnum absque injuria*. The further distinction is pointed out between *Tracy* v. *Osborne* and prior authority,[6] in that here the injured parties were not at the time of the contract employees, and therefore no malice toward them is to be found in an intentional procuring of their discharge. The latter distinction is one which is not accepted in other jurisdictions. Little reason for it appears, for such employment as is interfered with is in almost all cases terminable at will. But the illegality of contracts which practically deprive the non-union laborer of his opportunity to work is asserted in a number of states.[7]

Tracy v. *Osborne*, on its own facts, is in accord with the authorities, not only in Massachusetts,[8] but elsewhere.[9] But the significance of the opinion lies in the attitude of the courts of that state toward labor combinations, restricting their legitimate activities to those involving direct benefits to the members.[10] The qualification represented by *Shinsky* v. *Tracy*, that such contracts may not unreasonably restrict the opportunity of non-union men to obtain work, is also supported by considerable authority,[11] and will undoubtedly be accepted as law in many jurisdictions. But it remains to be seen what will be the position of the courts

[5] 114 N. E. 957 (1917).

[6] Berry v. Donavan, 188 Mass. 353 (1905); Hanson v. Innis, 211 Mass. 301 (1912).

[7] Curran v. Galen, 22 N. Y. Supp. 826 (1892); Jacobs v. Cohen, 183 N. Y. 207 (1905); Schwarcz v. Int. Ladies' Garment Workers' Union, 124 N. Y. Supp. 968 (1910); Connors v. Connelly, 86 Conn. 641 (1913).

[8] Hoban v. Dempsey, 217 Mass. 166 (1914).

[9] Jacobs v. Cohen, *supra*, note 7; Kissam v. U. S. Printing Co., 199 N. Y. 76 (1910); Nat. Fireproofing Co. v. Mason Builders' Assn., 169 Fed. 259, 94 C. C. A. 535 (1909).

[10] Plant v. Woods, *supra*.

[11] Note 7, *supra*.

which take the view that the laborer has the right to quit work in concert with others, just as well as singly, for any reason he sees fit, so long as there is an absence of actual malice.[12] On this reasoning it would seem that the "closed shop" extended over an entire community or industry would be a legitimate object of a strike. From this it would follow that a peaceful adjustment by contract could be made, although thereby the non-union man was compelled to choose between joining the union and being driven out of his trade or locality.

W. W. S.

TRUSTS—*Cy Pres* DOCTRINE—CHARITIES—ADMINISTRATION BY THE COURT—The doctrine of approximation or *cy pres* has been frequently invoked by the courts in an effort to give effect to the intention of a testator when the scheme of distribution breaks down. The two well-known instances of its application are the cases where a charity has failed in some of its details and where the rule against perpetuities has intervened.

A recent New Hampshire case [1] presented the question as to what was the controlling purpose of the testator under the rule that where the formal intention fails, effect will be given to the substantial intention.[2] Property was devised to a Catholic parish in trust to build a church to be named after the testator, a Protestant. The testator expressed the wish that a tablet of bronze should perpetuate the memory of himself, his wife and family; and the hope that the gift prove "a lasting benefit to the people of the parish for many generations." It was contended that the devise to the parish was void because the rules of the church forbade the naming of a church for a Protestant. The court considered that the property was not given to the parish on condition that it build a church to be known by the testator's name, but in trust to be used for the benefit of the inhabitants. The court in reaching that conclusion cast aside the natural desire of the testator to create a monument to his name and laid hold of the fundamentally charitable purpose, which should have prompted the gift.

A similar conclusion was reached in a case [3] in the same jurisdiction, where a gift was made to establish a hospital in Franklin, to be known as the Proctor Hospital. Owing to the existence of a hospital in that town, it was impracticable to carry out the exact intention of the testatrix. The income was directed to be used in main-

[12] Parkinson Co. v. Bldg. Trades Council, *supra;* Kemp v. Division No. 241, *supra.*

[1] Gagnon v. Wellman, 99 Atl. 786 (N. H. 1917).

[2] Phila. v. Girard, 45 Pa. 27 (1863); Jackson v. Phillips, 96 Mass. 539 (1867).

[3] Adams v. Page, 76 N. H. 96 (1911).